

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BOB BRIGHTWELL,)
Plaintiff,)
vs.) Civil Action No. 03 - 205J
JOSEPH LEHMAN, in his official capacity)
as the Commissioner of Pennsylvania)
Department of Corrections; RAYMOND J.)
SOBINA, in his official capacity as)
Superintendent of the State Correctional)
Institution at Somerset; SYLVIA GIBSON,)
in her official capacity as Deputy Superintendent)
for Centralized Services of the State Correctional)
Institution at Somerset; GERALD ROZUM, in)
his official capacity as Acting Deputy)
Superintendent for Facilities Management of the)
State Correctional Institution at Somerset;)
DANIEL J. GEHLMANN, in his official capacity)
as Major of Unit Management of the State)
Correctional Institution at Somerset; and LEO)
GLASS, in his official capacity as Captain of)
Inmate Receiving Committee (I.R.C.) of the State)
Correctional Institution at Somerset,)
Defendants.)
Judge Kim R. Gibson
Magistrate Judge Lisa Pupo Lenihan

ORDER

The above captioned case filed on September 11, 2003, and was referred to United States Magistrate Judge Ilia Jeanne Sensenich for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. The case was transferred to Magistrate Judge Lisa Pupo Lenihan on April 6, 2004.

The magistrate judge's Report and Recommendation (Doc. No. 69), filed on December 5, 2005, recommended that the Defendants' Motions to Dismiss (Doc. Nos. 46 & 59)

be granted in part and denied in part. The motions should be granted as to Plaintiff's procedural due process claims (Count I), his state law contract claim (Count II), his international treaty claims (Count V) and his Eighth Amendment claim regarding Keri Lotion. The motions should be denied as to all other claims. The report and recommendation was served on the Plaintiff at SCI Mahanoy, 301 Morea Road, Frackville, PA 17932, and on counsel for the Defendants. The parties were advised they were allowed ten (10) days from the date of service to file written objections to the report and recommendation. Plaintiff filed a Motion for Extension of Time (Doc. No. 70) on January 27, 2006, which the Court granted. He filed a second Motion for Extension of Time (Doc. No. 72) on January 27, 2006. The Court again granted his motion, but required him to submit objections no later than February 10, 2006. Plaintiff filed a third Motion for Extension (Doc. No. 74) on February 17, 2006, that the Court denied. Plaintiff filed an Appeal of the Magistrate Decision (Doc. No. 76) on March 6, 2006, which was denied by Order of Court (Doc. No. 77) on March 21, 2006. No objections have ever been filed. After review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 10th day of April, 2005;

IT IS HEREBY ORDERED that Defendants' Motions to Dismiss (Doc. Nos. 46 & 59) are **GRANTED** as to Plaintiff's procedural due process claims (Count I), his state law contract claim (Count II), his international treaty claims (Count V) and his Eighth Amendment claim regarding Keri Lotion.

IT IS FURTHER ORDERED that Defendants' Motions to Dismiss (Doc. Nos. 46 & 59) are **DENIED** as to all other claims.

IT IS FURTHER ORDERED that the Report and Recommendation (Doc. No. 69) of Magistrate Judge Lenihan, dated December 5, 2005, is adopted as the opinion of the court.

Dated: April 10, 2006

By the Court:



Kim R. Gibson
United States District Judge

cc: Lisa Pupo Lenihan
United States Magistrate Judge

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